least it suggests that the information must be given on filing the writ so as to enable the defendant to prepare his defence.

When the irregularity is non-compliance with the provisions of statute law, the provisions of Order 63 rule 1 are not applicable (see Annual Practice 1940 p. 1554, note "Dispensing with strictness of Rules"). The applicants are accordingly entitled to have the writ set aside with costs *ex debito justitiae*.

Writ set aside.

[APPELLATE CRIMINAL JURISDICTION]

PEDLOW, J.

January 29, 1941.

TAN AH LEK v. REX.

[SINGAPORE MAGISTRATE'S APPEAL]

Liquors Revenue Ordinance (Cap. 225) S. 28—possession of dutiable liquor—forfeiture of taxi-cab belonging to an innocent third party.

Two men hired a taxi-cab from a public taxi rank and later instructed the driver to drive to a rubber estate where dutiable liquor was loaded into the taxi-cab. One of the passengers alighted whilst the other stayed in the car with the driver who was forced against his will to drive the taxi-cab. The taxi-cab was stopped by Revenue Officers when the dutiable liquor was discovered. Both the passenger and the taxi driver were charged with being in possession or control of dutiable liquor. The passenger pleaded guilty and was convicted. The taxi driver pleaded not guilty but was also convicted and fined. The Magistrate made an order forfeiting the taxi. The taxi driver appealed against his conviction.

Held, that the passenger was at all times in possession or control of the liquor but that there was no evidence at all that the taxi driver was in possession or control of the liquor and that his conviction must be quashed.

Held also, that the Ordinance did not give power to forfeit a motor car belonging to an innocent third party and the order for forfeiture must be set aside.

Semble that Section 83 (1) of the Liquors Revenue Ordinance does not authorise the forfeiture of a motor car to whomsoever it belongs.

MAGISTRATE'S APPEAL.

R. D. W. Edwardes-Ker for Appellant.

C. H. Butterfield (Crown Counsel) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Pedlow J.—The appellant is a taxi-driver. His taxi was stopped on the 17th December, 1940, at Yio Chu Keng Road by Government Monopolies officers. In the taxi was a passenger and the passenger had with him dutiable liquor. The passenger admitted that the liquor was his and that he had hired the taxi. He was convicted of being in possession or control of dutiable liquor. So was the appellant, the taxi-driver and his taxi was forfeited. From this conviction he has appealed.

The conviction in this case rests upon a view of the law taken by the learned Magistrate viz. that, if I hire a taxi-cab from a rank on the public street and enter it with my suit-case and tell the driver to drive me to a railway station, the taxi-driver en route is in possession or control of my suit-case. I know no proposition of law which would support that view.

Stroud's Judicial Dictionary defines "possession" as follows:—

"Possession," qua the Criminal Law and Offences against Property, has been thus defined:—

"A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may presumed to intend to do so in case of need." With that definition I agree.

It would be absurd and ridiculous to hold that the taxi-driver was in possession or control of my suit-case. The learned Magistrate does not in his very long and very painstaking judgment tell us at any time why he arrived at the conclusion that the accused was in control or possession of the liquor. In fact he says speaking of the appellant:—"His possession or control is consistent with the first accused being its owner." The appellant was the second accused and this means that although you have the owner of the property accompanying it and taking control of it and possessing it in the taxi-cab (as the learned Magistrate himself found on convicting the first accused) yet the taxi-cab driver is also to be deemed to be in possession of it. The learned Magistrate doesn't explain why he is to be so deemed but apparently it is because he was driving the taxi. The matter has only to be stated clearly to show the absurdity of such an assumption. The taxi-driver in obeying the call from the rank that night in Jalan Besar was only carrying out what was his statutory duty and his licence was liable to cancellation if he refused to take a passenger. There was no evidence whatever nor was it even suggested that the taxi-driver knew or suspected the purpose for which the passenger intended ultimately to use the taxi.

As I see this case no facts have been proved which will in any way show that the taxi-driver was in possession or control of this liquor. Even if we disbelieve his story of his intention of going to the Police, even if we assume that he knew that it was liquor and his evidence was that he suspected it was dutiable

liquor, it still does not follow that the liquor was either in his possession or control. The learned magistrate has at the trial convicted one man (the first accused) of being in possession or control of and being the owner of that liquor. No evidence has been led from which the learned magistrate can reasonably infer that the taxi-driver was exercising over that liquor any of the qualities of ownership or that it was in his possession or control. It is not sufficient to say that the taxi-driver was able to decide when or where to stop the taxi or which turning to take at a cross-roads. That does not constitute his being in possession or control of the liquor for the purposes of the liquors Revenue Ordinance.

I am indebted to the learned Deputy who quite correctly and in all fairness to the appellant informed the Court that the appellant had made a long statement to the Monopolies Department as early as was reasonably possible and that this statement was exactly the same as the story he told in Court. This story, if accepted, proves that what the appellant did in allowing the liquor into his taxi was done under duress. In the absence of any evidence to the contrary it should have been accepted. Two of the taxi-drivers on the same rank stated in evidence that had they been first on the rank that night they would also have gone when summoned, and there is not the slightest ground for assuming that the accused when he set out in his taxi from the taxi rank had any idea that his taxi was being engaged for the purpose of attempting later to move dutiable liquor from one place to another. The conviction against the appellant must therefore be quashed.

But that does not settle the whole problem. It does not settle the question of the forfeiture of the taxi-cab. There is no doubt that an offence was committed in respect of this liquor and that the liquor was found in the taxi. Does section 83 of the Ordinance mean that the property of an innocent third party must be forfeited? In my view the Ordinance does not call for any such forfeiture. Were the case otherwise one must reach the most absurd positions. It is to be said that if a litigant is dissatisfied with a decision of mine he could out of spite, leave this Court and go downstairs to where my car is garaged and place some dutiable liquor in it or himself get into my car with dutiable liquor in his possession, have himself arrested by the Monopolies Department and have my car forfeited under this section? Surely that would be absurd? The Ordinance cannot in my opinion have such a meaning as applied to an innocent third person.

If I am wrong as to this I would raise another point. As I read this Ordinance I see no power in it at all to seize and forfeit a motor car. The Ordinance talks of things you may seize. On the principle of the *ejusdem generis* rule or of the rule of interpretation that *expressio unius est exclusio alterius* motor cars are not included. Had the Legislature meant to include motor cars it could and should have mentioned them. Nothing would have been easier or simpler. The Legislature realized that it had to draw the line somewhere from the practical point of view. In the case of a ship it drew the line at a ship of 100 tons burden and even then it must be proved to the satisfaction of the Court that the offence was committed with the knowledge consent or connivance of the owner or agent or master of the ship—Section 83 (2). Incidentally this sub-section shows that 'conveyance' in sub-section 83 (1) is not all-embracing as it does not include ships which are specially provided for in sub-section 83 (2). Supposing some dutiable tobacco or some dutiable chandu or some dutiable liquor were placed in the luggage coach of an F.M.S. Railway train and is found. Is the coach to be seized and forfeited and the railways, an innocent third party, to sustain the loss and the general public the inconvenience of having no luggage van? It seems to me very doubtful whether this Ordinance can be construed reasonably to include anything beyond things *ejusdem generis* as the things mentioned therein, i.e. carts, carriages and conveyances of the nature of carts and carriages. I do not, however, think that it is necessary for me to decide this point in the present case because I do not think that the Ordinance demands that a motor car of an innocent third party shall be forfeited under this section. The accused has committed no offence under my decision. It is surely monstrous to say that he must pay the price of the conduct of some guilty party.

I therefore set aside the order for the confiscation of the taxi and direct its return to the appellant. The appeal is allowed and the conviction of and sentence on the appellant are quashed. The fine, if already paid, must be refunded.

P.S. I might add that were there any real evidence of complicity on the part of the taxi-driver the proper thing to have done would seem to be to have charged him with abetment of the main offence committed by the person in charge of the liquor.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.